

Remarks

In the Office Action dated February 3, 2009, claims 1-8, 10, 11, 17-24, 46-49 and 51-54 were pending, and all were rejected. All previously pending claims have now been cancelled and new claims 55-74 are introduced herein. No new matter has been added by these amendments. Reexamination and reconsideration of the claims is respectfully requested in view of the following remarks.

Moot Rejections

The rejections under §112, second paragraph for indefiniteness and written description (new matter) based on the claim limitation "multiple pathotypes" is now moot as the claims containing this limitation have been cancelled and the newly added claims do not contain this limitation. The rejection under §103 are also moot as all rejected claims have been cancelled and all newly added claims contain the limitation that "the clubroot resistant *B. rapa* plant is a Chinese cabbage F1 hybrid 'Parkin'", which the Examiner did not reject as obvious.

Rejections Under 35 U.S.C. §112, First Paragraph – Written Description

The Examiner has maintained the rejection of claims 1-8, 10, 11, 17-24, 46-49 and 51-53 under 35 U.S.C. §112, first paragraph, "as failing to comply with the written description requirement." Applicants respectfully disagree with the Examiner and traverse the rejection.

The new claims are drawn to a *B. oleracea* plant having resistance to clubroot disease. The claims require that the resistance to clubroot be monogenic and dominant, wherein the resistance is obtained from a *B. rapa* plant and that the *B. rapa* plant be the Chinese cabbage F1 hybrid 'Parkin'. Applicants believe these claims to be adequately described in the specification.

Regarding the Examiner's previous rejection, Applicants believe these new claims render the rejection moot. Specifically with regards to possession and the Examiner's statement that Applicants were only in possession of line CFL667, Applicants do not understand the Examiner's reasoning as provided on page 6 of the Office Action dated February 3, 2009. The Examiner states that there "is no evidence in the specification that Applicant was in possession of the multiple variants." This is simply not true. Applicants again draw the Examiner's attention to pages 11 and 12 of the specification where the production of multiple variants of *B. oleracea* with the monogenic

and dominant clubroot resistance from *B. rapa* is described. For example, beginning on line 16 of page 11, it is noted that “the resistance to clubroot was transferred to other *B. oleraceas*, in particular white cabbage, cauliflower and Brussels sprouts, using standard breeding techniques well-known in the Brassica art. The trait was also further introgressed into *B. oleracea* elite lines.” Continuing on from here until approximately line 18 on page 12, the process for introgressing this resistance to other *B. oleraceas* is described. Further, on page 20 in Example 1 under “Transfer to other *B. oleraceas*” it is noted that this resistance was transferred to other *B. oleraceas* variants. In Example 3 on page 22 in the description of Table 1, it is described that two cauliflower hybrids were obtained that carried the described clubroot resistance, F308 and F311. Again in Example 3 on page 23 in the description for Table 3 (which continues onto page 24), it is described that four additional resistance cauliflowers were obtained (D249, D506, E245 and E246), as well as two resistant Brussels sprouts hybrids (SPR666 and A876) and two resistant white cabbage hybrids (F1182 and F1187). Thus, Applicants would submit that it is abundantly clear from the specification and the Examples provided therein that multiple *B. oleracea* variants were in the possession of Applicants.

The Examiner’s statement that there is no evidence that Applicants were in possession of the multiple variants is, again, simply untrue. Based on the above information provided in the specification, Applicants have provided multiple examples of plants that describe the claimed subject matter. Specifically, Applicants have shown four different *B. oleracea* variants having resistance to clubroot disease: broccoli, Brussels sprouts, white cabbage and cauliflower. In each case, the clubroot resistance present in each variant is (1) monogenic and dominant as well as (2) obtained from a *B. rapa* plant Chinese cabbage F1 hybrid ‘Parkin’. This is clearly ample evidence that Applicants were in possession of the claimed subject matter. As explained in *LizardTech, Inc. v. Earth Resource Mapping, PTY, Inc.*:

A claim will not be invalidated on section 112 grounds simply because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language. That is because the patent specification is written for a person of skill in the art, and such a person comes to the patent [office] with the knowledge of what has come before. Placed in context, it is unnecessary to spell out every detail of the invention in the specification; only enough must be included to convince a person of skill in the art that the inventor possessed the invention and to enable such a person to make and use the invention without undue experimentation.

424 F.3d 1336, 1345 (Fed. Cir. 2005) (citing *Union Oil Co. v. Atl. Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995)).

Accordingly, as Applicants have described *B. oleracea* plants having the claimed characteristics and have set forth multiple examples in the specification, the written description requirement has been met.

Rejections Under 35 U.S.C. §112, First Paragraph – Enablement

The Examiner has maintained his rejection of claims 1-8, 10, 11, 17-24, 46-49 and 51-53 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully disagree with the Examiner and traverse the rejection.

As the above claims have been withdrawn, and the new claims are directed to a *B. oleracea* plant having resistance to clubroot disease, wherein the resistance to clubroot be monogenic and dominant, wherein the resistance is obtained from a *B. rapa* plant and that the *B. rapa* plant be the Chinese cabbage F1 hybrid ‘Parkin’, Applicants believe that the only remaining enablement rejection is directed to the availability of Chinese cabbage F1 hybrid ‘Parkin’. Applicants state that they are obtaining seed of Chinese cabbage F1 hybrid ‘Parkin’ and will be depositing said seed with an appropriate depository.

CONCLUSION

Applicants respectfully submit that all outstanding issues in the present case have been addressed in this paper. Applicants request continued prosecution on the merits and allowance of the claims as presented herein. The Examiner is invited and encouraged to call the undersigned attorney for Applicants at 919-765-5117 in the event that issues remain unresolved by this response and could be discussed via telephone for clarification.

Respectfully submitted,

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